IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA CHARLOTTE DIVISION

DOCKET NO. 3:00-cr-169-FDW

UNITED STATES OF AMERICA)	
)	
vs.)	
)	
CHARLES STEPHEN PROPST,)	ORDER
)	
Defendant.)	
)	
)	

THIS MATTER comes now before the Court upon Defendant's "Motion to Request Specific Performance of the Government to Grant Reduction of Sentence for Substantial Assistance Pursuant to Rule 35" (Doc. No. 196), filed April 23, 2009. Defendant's Motion is DENIED.

A federal court may only inquire into the Government's motives not to file a Rule 35(b) motion in limited circumstances. See United States v. Wallace, 22 F.3d 84, 87 (4th Cir.1994). The Court may review a prosecutor's refusal to file a motion for substantial assistance and grant relief if the refusal is based upon an unconstitutional motive, such as race or religion, or was not rationally related to a permissible government objective. United States v. LeRose, 219 F.3d 335, 342 (4th Cir. 2000). A defendant must make a "substantial threshold showing" that the Government's refusal stems from these improper or suspect motives before a court may order discovery or hold an evidentiary hearing. Id.

In his Motion, Defendant asserts that he "has rendered substantial assistance under the pretense of a coming Rule 35." (Def.'s Mot., Doc. No. 196, at 1.) Defendant provides no more specific assertions and states nothing suggesting that the Government has acted out of an

unconstitutional animus or that its actions lack a rational relation to permissible government objectives. Defendants statements therefore do not even approach, let alone satisfy, the "substantial threshold showing" required by the Fourth Circuit before this Court may question the Government's refusal to make a Rule 35 motion.

Accordingly, Defendant's Motion is DENIED.

IT IS SO ORDERED.

Signed: April 27, 2009

Frank D. Whitney

United States District Judge